

**Minutes**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, August 6, 2012**  
**Kitty Hawk Town Hall, 6:00 PM**

**AGENDA**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Service Recognition
  - Sandy Hawley, Office Assistant/Receptionist, 10 years
  - Diana Pittman, Police Records Clerk, 5 years
5. Presentation
  - Jim Corrin, Director of Government Relations and Doug Underwood, Director of Operations with Charter Communications
6. Public Comment
7. Consent Agenda
  - a.) Approval of Minutes. June 11, 2012 Recessed Meeting, June 25, 2012 Recessed Meeting, July 2, 2012 Regular Meeting Minutes
  - b.) Revenues and Expenses Report for June
  - c.) Tax Pick Ups and Releases
  - d.) Request to Purchase Three Self-Contained Breathing Apparatus for the Fire Department
  - e.) Memorandum of Agreement between the North Carolina Sedimentation Control Commission and the Town of Kitty Hawk
8. Items Removed from the Consent Agenda
9. Public Hearing
  - a.) Text Amendment: Proposal to add Subsection 42-250(c)(34) allowing "electronic gaming operations" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.
  - b.) Text Amendment: Proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments, provided that certain criteria are met.
10. Return to Regular Session
11. Planning
  - a.) Site Plan Amendment: Application to amend the requirements of the original site plan approval for Sea Scape Beach & Golf Villas at 4724 N. Croatan Highway to increase the maximum number of multi-family residential dwelling units from 120 to 126. There are no changes to the existing site proposed as part of this application.
12. New Business
  - a.) Amendment to the Town Code: Section 20-51. "No Parking" on the South Side of Luke Street from Ride Lane to North Virginia Dare Trail.
  - b.) Amendment to the Town Code: Section 20-54. Allow Parallel Parking on the North Side of Luke Street from NC 12 to Ride Lane.

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- c.) Agreement for Professional Services with Albemarle & Associates. This agreement, in the amount of \$35,600, is for procurement of CAMA permits and NCDOT agreements for encroachments for areas 1-7 and 9 as identified in the town's Stormwater Management Plan.
- 13. Reports or General Comments from Town Manager
  - a.) Update on Kayak Launch on Bob Perry Road
  - b.) Possible Funding from Clean Water Management Trust Fund for Stormwater Management Projects
  - c.) Update on Recycling Evaluation
- 14. Reports or General Comments from Town Attorney
  - a.) Update on Overton Property at 731 W. Kitty Hawk Road
- 15. Reports or General Comments from Town Attorney
  - a.) Recreation Committee Update
- 16. Public Comment
- 17. Adjourn

**COUNCIL MEMBERS PRESENT:** Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

**STAFF MEMBERS PRESENT:** Town Manager John Stockton, Town Clerk Lynn Morris, Attorney Starkey Sharp, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey (PW Director Midgett absent)

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at 6:00 p.m. and welcomed and thanked everyone for attending the meeting.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

Following a moment of silence the Pledge of Allegiance was recited.

**3. APPROVAL OF AGENDA**

Councilwoman Klutz made a motion to approve the agenda with the removal of 7(e) from the consent agenda. MPT Perry seconded and it passed unanimously, 5-0.

**4. SERVICE RECOGNITION**

Manager Stockton read aloud the recognition for 10 years of faithful and dedicated service and thanked Mrs. Hawley for her hard work.

Police Chief Ward read aloud the recognition for 5 years of faithful and dedicated service and thanked Mrs. Pittman for showing up every day with a great smile on her face.

## **5. PRESENTATION**

**Jim Corrin, Director of Government Relations and Doug Underwood, Director of Operations with Charter Communications**

*Corrin: My name is Jim Corrin and I am Director of Government Relations for Charter Communications. I want to let you know how pleased I am to be back in town. Some of you may know I was here on June 20<sup>th</sup> with a couple of other Charter folks and met with Manager Stockton and Attorney Michael. It was a good meeting and at the end of it my boss said Jim and Doug will be delighted to come back and speak with council. And so we are back and are pleased to be back.*

*I have already had an opportunity to discuss Charter briefly with a couple of you and I want to let you know right off the top we have work to do in customer service. I think that is abundantly clear to a few of you. It is clear to me and I want to tell you a little about what we are doing about it and leave room at the end for any questions or comments that may come forward. I may not be able to answer all of your questions in real time tonight but will guarantee that I will take good notes and you will hear back from me or one of my peers on your concern before the close of business on Friday. And with that, let me offer some brief remarks about Charter.*

*Again, I am Director of Government Relations for the portion of Charter Communications footprint that includes the states of South Carolina, North Carolina, and Virginia. We have 25 offices and our main office is in Greenville, South Carolina and that is where I traveled from to be with you this evening. Charter is the fourth largest cable operator and I should say "wire line" cable operator because there is a distinction now.*

*This is an extremely competitive market and some of you may have concerns about Charter being the only game in town and another competitor is needed. Please, let me respectively assure you, the competitors have been here and they have been here for longer than I have been with Charter. That is about 15 years. Verizon and AT&T now have the ability to get into the video business by virtue of state laws in North Carolina, South Carolina, and Virginia and probably about 18 or 19 other states in the United States. But our fiercest competition is from DBS, Direct Broadcast Satellite. You will know them as Direct TV, Dish Network, etcetera. Charter has about 4,000 residential households in town, about 2,000 customers. Our penetration on our video product is about 50%. You may ask the question what are the other 50% in town doing for video reception. I can tell you about 25% to 35% are getting their video from satellite TV. That roughly takes you up to about 82, 85%. The remainder, I am not certain, but please, please, be assured there is fierce competition for video customers in this market on the Outer Banks and in the entire United States.*

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*Video is not the only product we offer. We offer a very robust high speed data product. It is called Charter Internet. We now offer downstream speeds in town of up to 100 Mbps. We are pretty proud of that product. It is at 100 for residential needs. If you are a gamer or you sell a lot of products on eBay, maybe you need 50. If you have 100 it is blazing and it is out there should you want it.*

*Charter also has sister companies. There is Charter Business which is our commercial sales arm and they are active here. We also have a media sales advertising firm called Charter Media. There is a Charter Media presence here but we also contract out some of our Charter Media ad sale business not only in Kitty Hawk but on the Outer Banks and in other parts of Virginia. We also offer Charter telephone. Charter telephone is the newest of our products and you have heard the phrase before and that is "the bundle." Everybody has to bundle. Charter has a voice video and data play. We may get a question tonight about wireless. Charter has looked into the wireless business, cell phone. It is not for us right now. It may be down the road.*

*I want to talk to you about the franchise agreement between Charter and the Town of Kitty Hawk. The franchise agreement is currently active and in force. It expires on August 1, 2016. A kind of new wrinkle is that up until about 3 years ago the local municipality and the cable operator would come together and negotiate a successor franchise agreement whenever the current agreement expires. The general assembly in Raleigh put in place or voted in a State Cable law and it has been in place for several years now. What that does, for better or for worse, it takes the negotiation from the municipal partner. Because you and I are partners and it takes that negotiation out of our hands and it puts it with the Secretary of State's Office in Raleigh. When this agreement expires we will not be able to sit down together and hammer out a successor document. What Charter will do instead under State law is apply for a State franchise with the Secretary of State's Office.*

*We currently pay a franchise fee to the town which is 5% of our gross revenues. Under state law we will no longer pay a franchise fee directly to the town. However we will pay a communications sales tax, also in the amount of 5% of our gross revenues. The percentage does not change and the revenue stream from which that percentage is generated does not change. I have not looked at the franchise lately and there may be other revenue streams that Charter does not pay under its local agreement that we will start paying on under the state agreement. There may be good news there. The money is paid by Charter to Raleigh and that money is thereafter reapportioned and sent to the municipalities. That is how it is going to work in late summer of 2016.*

*I have more to talk about but I want to introduce my colleague. We were hopeful of having Doug Underwood here tonight but he has been called to meetings with our regional vice-president. He sends his regrets, and he wants a rain check. I have with me Bill Trotter. Bill is a technical operations manager and he is responsible for that portion of our system that includes the Outer Banks. I want him to tell you a little about a preventative maintenance plan that Charter is putting into place. It is a phenomenal, multi-million dollar plan, and the heart of the plan*



*involves diving deeply into the plant here in Kitty Hawk and everywhere else in those 3 states to make faults and outages far, far less than they are today. And then we would like to take questions if council will allow us to.*

**Bill Trotter:** *Thank you Jim. I want to talk a little about the cable plant that we have here in Kitty Hawk and the Outer Banks area. It has probably been years and years since any kind of preventative maintenance program has been implemented on the plant here or in any Charter area across a couple of states. Back in January Charter allocated millions of dollars for us to start deep diving into what is causing those problems. We are really looking at every single inch of our plant out there, an inch at a time. Is there anything that is wrong with it, anything that could potentially happen, and if any of those things are found, we are going ahead and correcting them now. Any kind of amplifiers that we use in our system, any of the equipment that is not running at the top, we are changing it out.*

*And then of course our people too. We have invested a lot of money lately trying to get those folks that we are sending to your house to not just fix the issue that you have now but to deep dive into every service you have. If it is a video issue we want them to deep dive into your internet service and your phone service to make sure that they are not coming back in a week or two to fix a different kind of issue. We are trying to get them to do what we call a "whole home pm program."*

*All of our plant out there is powered by the power company. We have a lot of power supplies out there. There are hundreds and hundreds of them in the area and when we lose power the system goes down. So we have put a very stringent "pm" program there ... visiting those and actually going there and verifying the batteries, verifying the operation, and installing status monitoring where we can see them remotely and make sure they are up and working. We can test them remotely.*

*That is just a few of the things we are doing right now. It is a two year plan and for the area we are about 40% through. We started in January and I think we will be finished in a year. Then it will become ... we just do it over and over. It is not going to stop. When we get through the first time we are just going to start over and go through again and again and we are going to keep it that way. It is a very good plan and I think you will see huge improvements in the service that you see around here and the reliability that you have. Are there any questions?*

**MPT Perry:** *The state of the primary receiving gear in Nags Head. I am told that is 20+ years old. Is that part of your upgrade or is that a true statement?*

**Trotter:** *Yes. In fact probably 75% of all the equipment in Manteo, it is in Manteo, has already been replaced this year and we will probably have it all complete by the end of the year. Eventually we will be transmitting more and more over our internet backload because we are going to convert everything to IP and we will be transporting it down here. We will have it*

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*coming from possibly all the way from Spartanburg, Asheville, and maybe out of Suffolk. It will all be in a redundant ring so if one little site fails it switches and feeds it from another site.*

**MPT Perry:** *Your receiving plant is no longer in Nags Head. It is actually in Manteo. Is that what I am hearing?*

**Trotter:** *Manteo is where we originally ... that is where we call dead end and that is where everything comes out of.*

**MPT Perry:** *What is going on in Nags Head?*

**Trotter:** *That is just a hub. We transport from Manteo up to Nags Head and then it feeds out from there to the individual smaller node areas. We do the same thing in Corolla and Waves. I think that is all of them.*

**MPT Perry:** *And when you said the plant here in Kitty Hawk, are you talking about the cable layout?*

**Trotter:** *All ... every bit of the cable layout.*

**MPT Perry:** *That is what you call a plant?*

**Trotter:** *Yes.*

**MPT Perry:** *I am thinking something like a power plant but that is not what you are ...*

**Trotter:** *No. This would be our physical cable throughout the whole town whether it is underground or aerial. I do not know if you have seen it lately but we have had a lot of crews in the area replacing a lot of underground cable. Where rodents have eaten into it, it is not necessarily causing a problem but when we shoot it, it sends signals down and it lets us see what is going on inside that cable. If we find something we go in there and replace it. We are not going to see the problem in the future.*

**MPT Perry:** *I had noticed more workers but it came after the complaints. And some of your subcontractors do not always finish the job and I know that personally. We have to continue to call back to customer service, which has not been good, to fix it.*

**Trotter:** *We know that. Are those the contractors that are visiting the homes or the construction contractors?*

**MPT Perry:** *The one that I am talking about in particular would be your subcontractor that comes after a lightning strike. He fixes something on both ends but does not replace the wire*

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*underneath and you have to call customer service and that is not good. If you do not know somebody you cannot get it fixed. That needs to be fixed.*

**Trotter:** *That is something I have taken on recently with the contractors here. I cover eastern North Carolina and we definitely started with our contractors. I am working on getting it to where they are making sure they are doing all those things and that they are not going back. We are paying them for it and we need them to fix it.*

**Corrin:** *Can I add to your comment? John has my contact information and he has Doug Underwood's contact information. He is Director of Operations for this part of our plant and Mr. Trotter works for Doug. Those are clearly two points of contact for you going forward.*

**MPT Perry:** *I am more interested in the citizens being able to get good customer service. I can take care of myself.*

**Trotter:** *There is definitely a focus on that not just here but in some of our other areas. We know where we are falling short and we have a focus on those particular changes.*

**Mayor Perry:** *I know that most utilities have a central place where you call but it would be good if you could have a local number at your local place here that people could call. I think there would be much more satisfaction if they could talk to somebody locally and get some answers or get some help. It is almost impossible for the general citizens to find somebody they can talk to. That seems to be a problem. I know that in Kitty Hawk Village a lot of your connections are such that when we have a high tide they are under water. I realize that can create a great problem and you might want to think about raising those up so they are not in the water all the time.*

*I know Emilie does not want to say anything but I have to talk to her from time to time and at times her phone just goes away when I am talking with her. And sometimes you cannot call her for a couple of days. I know she has had many people go out and try to work at her place and it is still not fixed. But the reason we got in touch with you after a while was because we had people come here and ask about the franchise and why can't we do something to help.*

**Corrin:** *Mr. Mayor if you have any concerns, regardless of the type, regardless of who it is, call me personally. And I will respond to you personally.*

**Mayor Perry:** *But the general citizens ... like he said, I can take care of myself. It is the general citizens that do not have that opportunity.*

**Corrin:** *We have 24/7, 365 a day call centers all over the country and we have to pay the federal government ... we are one of the, I am not going to say we are the number one, but we are probably one of the most legislatively regulated industries in the United States. One of the ways the federal government measures us, and this is in the cable act and is enforced by the*

*FCC, we must meet certain call metrics on a weekly, monthly, yearly basis. If we do not, we are going to get fined and those are fines with a bunch of zeros after them. Our metrics, I would be pleased to show our metrics, say that we are. Believe me I am not for an instant minimizing the concerns in your advocacy on behalf of the citizens in Kitty Hawk. I am not doing that. I am just simply suggesting that we do work very, very hard to answer those phones and the federal government says we are answering the phones pretty well. If we are not doing a good enough job for Kitty Hawk, we need to do better.*

**Mayor Perry:** *I do not think we are talking about somebody getting out there in time but getting the problem fixed. And thinking it is fixed and they leave and then they have to come back. I think that is part of the problem.*

**Bateman:** *That is not the only issue. You have a great call center. They take the calls. What they do with the call and execution of the problem, the communication at that point on, until it gets back to the customer that is where the problem lies. If you say you are going to be there between 8 o'clock and 12 o'clock and the guy shows up at 5 o'clock in the afternoon ... the lady takes off the morning from work and it cost her time. She is just as busy as you are and the guy shows up at 5 o'clock and she is not there and then she has to reschedule the whole appointment again. In the meantime you are looking at another three or four days because you do not schedule it for the next day unless you have people working in the area. It poses major problems. I think the communication is an issue.*

**Klutz:** *I would like to make a couple of comments about your call center. One of the most frustrating things is you have all of the recordings that you have to get through before you get to a person that can help you. In my case I probably have 50 calls that I have made. I do not call anymore because it is just too time consuming. I would like to know if there is any way they can see a phone number that is calling has had the same complaint over and over again. Whenever I call I try to say this has been happening all the time could you check my record. It seems there should be some way in an automated system to pop up with this is a problem. For me it is my phone. I have to tell you it is frustrating when I get on my cell phone and the first automated question I get is something like "are you calling from your Charter phone now?" And I have just said that my problem is the phone.*

*The other thing that happened is I called and had a conversation about some of the same old problems which is the phone and internet for me and the person on the other end told me I had to call my local cable company. I said you are my local cable company. This is the only number I have to call. There is some sort of a disconnect at that central location with regard to how they communicate with people that are calling.*

*My first recommendation is if there is a problem phone number or address something alerts the person on the other end to that fact without having to request ... please look back and see all of the complaints. The other is it automatically takes you through the business of unplugging your modem, plugging it back in, doing a few things until your head wants to explode. I have gotten*

*to the place where I just keep on saying "agent" until I get a human being to talk to. It is a user hostile system.*

**Corrin:** *I feel the same frustration when I am calling other businesses. I am sure you will agree most every large company have multi ...*

**Klutz:** *I understand. The other comment I would like to make is that I have had very good experiences with the contractors who have come to my home. They have been pro-active, tried to find what was going on, and some of them I have seen multiple times. They know they have done so many things but they keep on trying to find what it is. My feeling is it is not anything to do with the connection to my home. I think every wire in the house has been changed. I just wanted to give you a positive feedback on the people that have come to try to help.*

**Corrin:** *You made a couple of good points and if you will indulge me I would like to respond. You said every wiring and forgive me. I did not hear your last statement, every wiring in your home is what?*

**Klutz:** *I said I think they have changed out every wire in my home. I mean I do believe that because ...*

**Corrin:** *And the problem still exists?*

**Klutz:** *The problem still exists. I have a question. You were talking about the preventive maintenance in Manteo and some of other places. How far along are you into Kitty Hawk? Are you working from that end up this way?*

**Trotter:** *No. When we started we looked at the areas that were driving the most customer complaints. We have them spotted and there are some here. We want to get those out of the way and then we will work on other areas that are not having so much issue.*

**Corrin:** *I want to speak to your concerns about bad customer experience because you unfortunately got a rep that did not live up to the company's expectation. You are absolutely correct. When you call in, if you are calling in on the number using a phone number that is associated with your account, all of your account history flips up.*

**Klutz:** *When my phone is out then I am using another phone.*

**Trotter:** *If she gives her cell number as a secondary number when we pull it up ...*

**Klutz:** *I have done that. I have given them my cell number.*

**Reid:** *What makes the TV picture crumble or digitize or whatever they call it.*



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**Trotter:** *Tiling. Little square blocks.*

**Reid:** *Is that the cable or is it the satellite receiving it.*

**Trotter:** *Could be either. It is a \_\_\_\_\_ signal on the cable system. It is not an analog channel. When it gets enough errors in it, it cannot reconstruct that picture so you start to see more tiles in it. That is usually a problem either with the cable system somewhere along the way or satellite reception. The satellite dish is picking up the signal. Heavy rain will start causing it to tile and during spring and fall we have what they call sun outages when the sun and satellite line up in a line and it over powers the satellite. Usually it is around three and five in the evening it will start doing that. It happens twice a year.*

**Reid:** *I personally have had pretty positive experiences with the cable company. I have had two or three with the TV and they have come out and fixed it and have been very pleasant. And I have had no problem getting to them. A little cumbersome sometimes because I will sometimes go through the computer and do it but it still has been very positive. I was considering a few months back using the cable for internet because I currently use it through the phone company. Fortunately, before I decided to switch this issue came up, the complaints, and so I have not switched to your internet service yet. If the internet service improves to the point where I am willing to switch I would like to do that.*

**Corrin:** *This is utterly unscientific but if I might, by a show of hands those of you who have Charter as internet product and have had challenges with it, could you do this? (He asked the audience to raise their hand). I think there is a couple.*

**MPT Perry:** *Let's wrap this up with one final thing. When a relative passes on, and you need to cancel cable, can you do something about having to take that relatives death certificate down to cancel cable to a house.*

**Corrin:** *Yes. That is absolutely unacceptable,*

**MPT Perry:** *That is the way it was. We need to move on.*

**Corrin:** *Very quickly sir. That is not acceptable. The attempt which failed on our part was for privacy purposes. Does not mitigate it a bit and I am sorry that happened. My apologies. We thank you for your time.*

**Mayor Perry:** *Thank you for coming and I hope we are able to hear better results.*

**Corrin:** *Yes sir. Thank you.*

**6. PUBLIC COMMENT.** The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.

**1. Marc DeFelice, Shelby Avenue, Kitty Hawk, NC:** *Good evening. I am here tonight on behalf of myself and my wife. We are property owners and longtime Kitty Hawk residents. My topic is about excessive noise on Shelby Avenue at the Dominion Power substation. They have been going through a lot of work and construction lately and my wife and I live across the street. It has been done in phases. I know they got some kind of a permit. It is not a construction permit per se. I called the town and did not jot that down but the trucks coming in and out of there ... they have torn all the trees down. First they tore the tanks down, disassembled them, banging and clanging loud, I mean the noise carries. You on council, in the day time hours, just step outside your door. I know you can hear it. We live across the street. It is really loud and I am here tonight to ask if there can be some kind of noise ordinance implemented, enacted, discussed, and somehow put into effect by the Town of Kitty Hawk. And when I say a noise ordinance I mean a specific decibel level number like the other towns have. I called and inquired there is none. They told me the best thing I could do is call the police and then that is a subjective call.*

*The other thing that is kind of associated with that is I called to find out and work in the town can be conducted between 7 a.m. and 10 p.m. There have been several occasions where they have started before 7 a.m. When you work hard, especially in the summer time if you are in a tourist based oriented job, you need that sleep because you are already working overtime. Making hay while the sun shines. And they come in and violate these times the town has set down. It has happened several times. How do I know? I live across the street.*

*Also, Shelby Avenue seems to be a port, or a conduit, for many of the heavy equipment trucks to park literally on Shelby and disembark their cargo. The clanging of ramps, the undoing of chains, the loud auditory backup signals by this equipment as they back it off. At several points in time I have also counted trucks loaded with fill filling in where they took down the old fuel containers coming every 90 seconds. I am not kidding you. I have looked out there where the trucks were coming in so often and several times they were backed up two trucks, three trucks waiting to get in because it was already full. And other trucks had not left yet to facilitate the movement.*

*My wife was going to work one morning and there were trucks literally parked in front of our driveway, blocking our driveway, and since it was early in the morning she did not want to honk her horn and disturb our neighbors. She sat there at the end of our driveway waiting for someone. Finally she had to get out of her vehicle and wave her arms and one of the workers on his cell phone at the wheel of his vehicle saw her and moved. He moved forward a few feet where he promptly parked alongside another truck going in the opposite direction associated with this area and literally blocked the road off for her to make her way to work. Finally they noticed and moved so she could go to work. But the bottom line is the noise is excessive. It is loud. I am sure in the other townships that decibel level number is exceeded almost all day. I am here to ask you if you can do something about it.*

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*One other thing. I found out by calling the town that their zoning is BR-1 residential. Residential? Well they are grandfathered in. I do not know how zoning works but I know in reading the newspaper when repairs are done to a house after a hurricane or whatever if something like more than 50% of the house footprint is disturbed or changed then they have to apply for a new building permit and everything in the house has to come up to the latest standard building code. Is there such a thing for zoning? Because I am telling you I know they are changing this. They are changing it and they are going to bring in a bunch of equipment. I know they are changing more than 50%. Even though they are grandfathered it is my view they should change the zoning to industrial or at the minimum commercial. That is all.*

**Mayor Perry:** *I was aware when they were tearing up the concrete it was creating a lot of noise but I was not aware it was noisy since they got the concrete.*

**DeFelice:** *Yes sir. The diesel trucks, the dumping and the clanging. And the other thing now that you bring that up, as they are dumping it, they have bull dozers rolling it and tamping it down and our house is literally shaking and some of our neighbors houses that I have spoken to as well. And then they go over it with a steamroller because it has first been dirt, then clay, then like crush and run. Throughout all these processes this has constantly been going on. So I would like to make a formal complaint number one. I have not called Dominion but you know ...*

**Mayor Perry:** *We will ask the town manager to look into it and see what he can determine.*

**DeFelice:** *The zoning as well?*

**Mayor Perry:** *We will look into that. There is a noise ordinance.*

**DeFelice:** *But there is no noise ordinance assigned in this town with a specific decibel level number that must be adhered to like in other towns. Kitty Hawk does not have one. I called. There is not.*

**Stockton:** *Mr. Mayor I received one complaint from a resident over there and they were complaining about the fact they were starting up early. I contacted Mike Thompson with Dominion Power and he told me he was going to have the contractors start at 8 o'clock. Evidently they have not done that is that correct?*

**DeFelice:** *No they have not. But my point is even though in the town it is 7 a.m. to 10 p.m. they have started even earlier than that which is way early.*

**Mayor Perry:** *We will check into it.*

**DeFelice:** *How will I know what the results will be?*

**Mayor Perry:** *Call the town manager.*

**DeFelice:** Okay great. Thank you for listening to me. I appreciate it.

**2.) Curt Baskette, 3605 Rabbit Hollow, Kitty Hawk, NC:** *The flooding problem is back. I understand the town may be pursuing some grant money in the next four or five months and I would like to take the opportunity tonight to ask you to assist in two areas. One, the water reserves are back up. The water table is now above ground level with all of the rain we have had in the month of July and now into August. Hurricane season is here. They are out there and it very well could be we will be looking to get some pumping assistance in the very near future. I just ask that we start looking and dusting off our emergency plans so we can respond very quickly if that should occur and making contacts with the state or whomever. The second thing is with the consideration of pursuing grant money coming up I would like to request that the part of the Stormwater Management Plan for Kitty Hawk that includes the area of West Tateway, west of the bypass, are included in that.*

*In that regard I would hope if you have not already made contact that we make contact with Senator White and start greasing some wheels to get the money. If we have not already done that now would be a good time to get him to come out to visit the areas since water is now standing in a lot of the retention ponds and the other areas. I would very much like to participate in that and if there is one or more of the councilmembers that may know Senator White and can set up that kind of meeting, I would like to participate and do whatever I can. It would be nice if he could come visit our areas to see the sites first hand, or if need be, we go visit him at some appropriate time. But the water is there and now is a good time to see it, to get a feel for what we are looking at.*

*I did not think the decisions had been made as far as what portions or what plans to pursue first. I understand that may not be the case. If you have not already made up your mind I would like to make one pitch. Unfortunately the plan for Rabbit Hollow is to try to maintain the water table at a certain elevation. If we could do that, that would serve as a retention pond for the whole area and prevent flooding, not only on the west side of the bypass but also help any kind of flooding on the east side of the bypass because if the water table is down either rainfall or ocean overwash will percolate quicker down into the ground. The plan on the west side should not be just considered as a plan for the west side. The main thing is the water table. By maintaining the water table it is helping all.*

*I guess the best example of that are the heavy rainfalls we had at the end of May. I think I heard it mentioned we had almost 7 inches of rain one day in Kitty Hawk. I was here and I can believe it was 7 inches. If you recall, both lanes of the bypass were closed because of water filling up the ditches and getting into the roads. There was flooding everywhere. Within 24 hours I would say that water had pretty much disappeared. At least gotten off of the roads and I do not think it was pumped. I think it percolated down because the water table was down. Not because we pumped it down because it just happened to be down. But it demonstrated if the water table is down periodic flooding damages can be greatly curtailed, minimized.*

*The water did go down and stayed down till about July when the rains picked up and now the water table is filled up. The point on the event in May is that, again, if your water table is maintained at a lower level you can greatly minimize the impacts of flooding and the cost associated with it. And it is not just to the west side. It is difficult to determine exactly how the water tables interact between areas but I think it is safe to say they are connected and if you are able to maintain a water table at a certain level the area adjacent to that is also going to be drawn down. If the water table is maintained on the west side of the bypass the east side is going to benefit from that as well and that means even for coastal flooding. If there is overwash and the water table is down that salt water is going to percolate down into the water table quicker, get it off of people's property or it will be a lesser amount of water you have to pump back into the ocean. I hope you keep that in consideration. You talk about the plan for the west side of the bypass is expensive compared to the other ones but it does not benefit just that area, it has other benefits. I hope you take that into consideration.*

*Anyway, we look for your assistance, I request your assistance in approaching Senator White or anybody else you can think of that may be of benefit to us to get either money or emergency pumping, wherever it may be, or for the grant money. I think we need to start working those items now even though we are four or five months away from actually submitting something.*

**Mayor Perry:** *Thank you. Does anyone else wish to speak at public comment? No one came forward.*

**7. CONSENT AGENDA.** Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

**a.) Approval of Minutes.** June 11, 2012 Recessed Meeting, June 25, 2012 Recessed Meeting, July 2, 2012 Regular Meeting Minutes. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for June.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**c.) Tax Pick Ups and Releases.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**d.) Request to Purchase Three Self-Contained Breathing Apparatus for the Fire Department.** The amount is \$18,004.46. *(An affirmative vote for the Consent Agenda will approve this request.)*

**Councilwoman Klutz moved to approve consent agenda items 7(a) through (d). Councilman Bateman seconded the motion and it passed unanimously.**



## **8. ITEMS REMOVED FROM THE CONSENT AGENDA**

**7e.) Memorandum of Agreement between the North Carolina Sedimentation Control Commission and the Town of Kitty Hawk:** This agreement will allow the Town to continue offering local assistance, permitting, inspections, and enforcement of State erosion and sedimentation control standards.

**Klutz:** I requested removal of this from the consent agenda because there were changes to the sedimentation control statute and I was not really clear on what those changes were. The last time we dealt with this we had a model ordinance from the state and we made some modifications to it to satisfy what we thought was necessary in Kitty Hawk. The other thing is, right now with sedimentation control, we limit the town's actions to those which just benefit the citizens and we do not get involved in any kind of litigation. **I recommend we put this item on next month's agenda, get all of the facts, and deal with it at that time. Councilman Bateman seconded the motion and it passed unanimously.**

## **9. PUBLIC HEARING**

**MPT Perry "so moved" (to go into public hearing.) Councilwoman Klutz seconded and it passed unanimously.**

**a.) Text Amendment:** Proposal to add Subsection 42-250(c)(34) allowing "electronic gaming operations" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.

**Heard:** *The first item we have for public hearing is a text amendment proposal that would add Section 42-250(c)34. It would allow electronic gaming operations as a conditionally permitted use in the Beach Commercial BC-1 district. The proposal submitted by the applicant proposes to allow this as a conditional use subject to certain conditions. For the record I would like to cover those so everyone has an understanding of what is involved.*

*The conditions proposed by the applicant include: 1) electronic gaming shall not exceed 25% of the gross floor area of the principle retail use; 2) on premise signage advertising electronic games is prohibited; 3) one parking space for every two machines would need to be provided; 4) each electronic gaming operation would be limited to a maximum of forty terminals per location regardless of the size of the operation; 5) operating hours would be the same as the principle use hours but shall be closed from 2 a.m. until 12 p.m. on Sunday; 6) electronic gaming room shall be restricted to patrons 18 years of age or over; 7) there would be no alcoholic beverages sold, provided, or consumed in the gaming area; and, 8) there would be regular supervision of the gaming room during operating hours. Those are the conditions proposed by the applicant. In addition there would also be a definition of the term electronic gaming operation and it would be added to the town ordinance should this be adopted.*

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*In reviewing the proposal by staff and the planning board it is noted the applicant has addressed a number of the concerns that might arise when looking at this type of use. There could be other things the council might be inclined to adopt for this as well. They could include further limitations on the number of gaming terminals, further limitations on the hours of operation, separation standards from residences, schools, day care centers, public parks or even other electronic gaming operations. There could be annual inspections by the Town of Kitty Hawk, as well as compliance with other applicable state and federal laws. These are all concepts that have been used by other communities in the State of North Carolina who have taken a look and adopted regulations on this type of business.*

*At their meeting on June 14<sup>th</sup> the planning board voted unanimously to recommend denial of the proposed text amendment. In their opinion they felt this amendment was not consistent with the town's adopted CAMA Land Use Plan. In particular, the incompatibility with the town's general vision of a family oriented beach community.*

**MPT Perry:** *Under operations where the operating hours shall be the same as the principle use hours and shall be closed from 2 a.m. until 12 p.m. Is the applicant basically looking at a 24 hour operation under this particular text amendment? With the exception of Sunday?*

**Heard:** *The way it is worded it would depend on the hours of the principle use. If the principle use is open 24 hours, conceivably, under the wording of this, the gaming operation could also be open 24 hours with the exception of Sunday morning.*

**MPT Perry:** *I just wanted to be clear on that. Thank you.*

**Mayor Perry:** *Has anyone signed up to speak to this portion of public hearing?*

Clerk Morris called Ann Greeson.

**1. Ann Greeson, PO Box 3172, Kill Devil Hills, NC:** Good evening. I am Ann Greeson, owner of Wink's Grocery Store and Deli, and I guess I am basically here this evening to answer some questions. One thing Mr. Heard just spoke of we are not open 24 hours a day by any means. We close at 10 p.m. in the evening. We are open at 6:30 in the morning and it is a very family oriented store. I know some of you and recognize some of you who passed through the game room to take a look at it. It is in a totally separate area from the grocery store. We also have a kids arcade in there as well and then the game room itself has the electronic games. It is in a separate area. We can actually close the doors if we need to. We want to offer any type of stipulations the town would need in order for us to continue to operate because it is not our principle operation by any means but we do make a little bit of money on it. In the winter time it does help out to be honest with you. Miles Davis could probably tell you when he closed Winks there is not a lot of money in groceries. But we sell boogie boards, we have a deli as well, and it does help just a little bit, that is true.

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*When I went to the planning board there were one or two people that thought maybe it was not family oriented. It is private and there are a lot of people that do not even know the game room is there except for regular gamers. We have grandparents who are there whose children are playing in the arcade room or having something to eat at the deli. We have never had any violations from the town from the police department, from ALE. We have had inspection after inspection. We have never had to call the police. We do not have unruly, strange, dysfunctional people hanging outside the building or inside the building because we have a lot of kids. We have a lot of grandparents. I see people here that their kids hang out there. It is kind of like a babysitting service, not in the game room, in the store itself and where the kid's games are at. And so I guess I am just here to answer some questions if you have any.*

**Mayor Perry:** *Anybody have any questions at this time? Hearing none he asked for the next speaker.*

**2. Jason Atkins, 201 Selwin Road, Newport News, VA:** *I am an attorney from Newport News, VA but that is not important tonight. I guess what is important tonight is that I will call myself a young man. I am a young man who grew up in Kitty Hawk since 5 weeks old. That was my first summer here and every summer thereafter. Coming of age, working in every restaurant and kitchen down here just about, internships with lawyers prior to law school, all of that fell into place and I am thankful to this area for that. I only live in Newport News by the way because my wife told me I had to. I lost after I dragged her through three years of law school with me but ... but the reason I am here tonight.*

*First off I am a general practice, also a defense attorney. And I am used to embracing subject matter and perhaps even people who are considered or met with contempt just about every day that ends in "y" and maybe that is the issue to this particular issue. But I hope it is not.*

*The only thing I really want to emphasize is that with respect to Winks being a family operation and a family historical situation has kind of dug in like an Alabama tick. I can speak personally to the fact that many toys, comic books, candy, and ice cream, were enjoyed by my sister and I, as well as my little girl who is here right now staying with my mom in Kitty Hawk. We have always enjoyed that experience. My little girl, Avery, still enjoys that experience and it is an interesting time for me. My mom sent me photos of all the things we used to do when we were growing up down here. Those were things like the surf slide that is gone, Dowdy's that is gone, the Ghost ship that is gone, and the bumper boats that are gone. All of those things, but Winks is still here. There is a gentleman seated behind me with a T-shirt on and on the back it says "An establishment since 1953." Yes, a big part of all of our lives.*

*With respect to what is taking place now because the machines are there. I know a little bit about them from having researched, briefed, and argued in the Virginia localities but again skipping all of that legalese tonight as to what is gambling and what is not gambling. I understand the role of North Carolina is not to necessarily prohibit it at this point through the courts but to regulate and that is what Winks is asking for. Regulations that would allow the*

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*status quo to continue in operation. But that status quo, I would assert, is not something that changes the characterization of the Winks store to a non-family circumstance. If you have been there, if you visit like Ann said, it is almost that you do not recognize the room is there.*

*There are such types of operations crossing the line in Moyock. That was a surprise to me. I do not know what brings that about up there but much less obvious is the circumstance at Winks and its effect on the body politic in Kitty Hawk in my opinion and observation. I am sure they would have everyone check that out and I hope everyone would take advantage of it but I know there was prior concern as far as the changing perhaps of Winks and that particular zoned block area from a familial perception to a non-familial perception. But I do not think it is there even with the status quo. Winks is a situation that provides the history.*

*I think there are some other people here that will speak personally to the use of the games themselves. My knowledge is more on the technical side versus the actual use but I just wanted to step forward and thank you all for time tonight to establish that having virtually grown up in that building and having it still be there as a part of what I came to know since 5 weeks old. I am really happy to see the place still thriving and if this is in fact an operation that continues to have that place thriving I ask that you give consideration to letting it roll on. But it would not be a situation where Winks is so bold to request that you do so without expecting a number of restrictions etcetera. Thus the reason for the text amendment and we ask that you give consideration to that.*

**Mayor Perry:** *Thank you. Anybody else?* Clerk Morris replied that is all of the people who had signed up.

**Mayor Perry:** *Does anyone else wish to speak at this portion of public hearing?*

**3. Paula Lingo:** *My name is Paula Lingo and I just want to say a couple of things for Winks. I am one of their typical customers and to me it is just a fun thing for me to do. I am getting far too old to go hang gliding, and parasailing, and all those things, and I just think it is great to have some place that is very family orientated, very quiet, and most of the people are somewhere between my age and 50. You do not see young kids in the gaming area. I just wanted to put in my 2 cents about it. I think it is a great thing, it is fun, it is relaxing, and I do not have a lot of discretionary income but what I do, I would like to be able to spend it the way I want to. Thank you.*

**Mayor Perry:** *Anyone else?*

**4. Amy Thibodeau:** *My name is Amy Thibodeau. I grew up in Virginia but moved here in 2000. My husband grew up in Duck and we live behind Ocean Boulevard and Winks. I think what we need to address is not what is so obvious ... as the lawyer said it is obvious in Moyock, it is the same thing in Winks. I have a twelve year old and a four year old and they both love Winks and love the deli. We love the convenience of being able to walk out our door and walk a*



*few blocks to get groceries and things like that. My son, who is twelve, loves to play video games and they love to go in there and throw their dollars in the claw and win nothing. Those are all things that all the kids love but I strongly disagree with having the gaming room right next door to the arcade. The deli is right there and there is an open wall. I think Ann said it can shut but I have never seen it shut. I mean anyone can go and look in there. My kids ask me all the time what is going on in there.*

*I disagree with having that in our town. I love that Winks has been there forever but we also have other establishments that have been able to make it through our economy without having these gaming systems. I feel I would not be comfortable staying in Kitty Hawk, having grown up in Virginia Beach but lived most of my time in Southern Shores and Duck, having that right outside my door. Beyond that I would not want to see Winks go but I definitely, as a citizen of Kitty Hawk, would not want to have the gaming there anymore and it is bothering me enough to leave dinner and come out on my time and say that.*

**Mayor Perry:** *Thank you. Anyone else wish to speak?* Seeing no one come forward, the Mayor asked for the record to reflect such.

**b.) Text Amendment:** Proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments, provided that certain criteria are met.

**Heard:** *The second item for public hearing is also a text amendment proposal. Looking at your agenda you will see this proposal is tied closely to a site plan amendment proposal that will be following the public hearings. As the planning board reviewed a site plan amendment at Sea Scape Beach & Golf Villas it became apparent there was an ordinance amendment that would be necessary if the council ultimately would like to approve the proposed site plan amendment and that is the purpose of this text amendment.*

*Specifically the proposal would add wording to subsection 42-129(7) to allow an increase of density in circumstances where there are nonconforming multi-family residential or group developments under certain criteria. This proposal would change some of the standards the town has for allowing a nonconforming multi-family residential use for condos, apartments, that type of thing. Allowing changes to that and specifically the proposal would look at changing the standard under which the density could be increased in a complex with those circumstances. The density under the current wording, if someone wished to increase the density without any other changes to the site plan or proposal, could not do so. What this would do is create an allowance for someone to increase the density within the existing buildings. In other words increase the number of units within the buildings as long as the physical characteristics of those buildings do not change. This would not apply to an addition, it would not apply to a new development on the same property as a nonconforming use, but it would apply in a circumstance where they would be dividing units up further.*



*The example with Sea Scape Beach & Golf is they are looking to take two bedroom units, and out of those units at certain times of the year, create two one-bedroom units. That would be the type of circumstance we are talking about and where this would apply.*

*The planning board, at their meeting on June 14<sup>th</sup>, voted unanimously to propose and recommend approval of a text amendment to add the following sentence to Subsection 42-129(7): "In instances where the dimensions of the structures are not changing and the number of bedrooms is not increasing, the number of units can be increased subject to approval of a revised site plan by the town council." That is the proposal as it was presented by the planning board. Councilwoman Klutz had recommended a minor wording change for clarification to the last part of the sentence that would change it to "subject to town council approval of a revised site plan." That is what the planning board has brought forward for consideration.*

**Mayor Perry:** *This is actually what exists now at Sea Scape is that correct?*

**Heard:** *Correct. I was going to get into more detail with the site plan but to cover the circumstances of that particular situation ... in 1981, it is actually one of the first development projects ever approved by the town, and Sea Scape Beach & Golf Villas was approved for a phased development of up to 120 units. There was going to be 20 buildings, six two-bedroom units in each building. What happened is that over time as they got through the final phases the developers chose not to build two of those buildings so they only built 108 units. But what also happened is at some point ... three of the buildings, which each contain six two-bedroom units, were modified in a manner that allowed them to be broken up into two one-bedroom units. Doing the math on all of that it means ... after talking with the town attorney and having him look into the legality and how we needed to treat this is for those units ... they ended up effectively having 126 units on the property and since they were only approved for 120 the accompanying site plan amendment would be to allow the 126.*

**Mayor Perry:** *And that is because they can lock the inside door so two separate people can go in and use them.*

**Heard:** *The two can function as completely separate and distinct units.*

**Mayor Perry:** *And it does not increase the number of bedrooms.*

**Heard:** *That is correct. It would go from one 2-bedroom unit to two 1-bedroom units in all those instances.*

**Klutz:** *The reason this came up was they are making a more robust kitchen area where before they just had a microwave. It started to look like those lockout units should be counted separately. That was the reason they came back to the town for this?*

**Heard:** *Correct. The town became aware ...*

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**Klutz:** *Was it two 1-bedrooms or one 2-bedroom and then a 1-bedroom that was ... I thought I remembered reading it was a 3-bedroom, 2-bedrooms and one lock out 1-bedroom.*

**Heard:** *It ends up with instead of one 2-bedroom unit ... there are 18 units that were done in this manner. So there are eighteen 2-bedroom units but each of them have the ability to have that door locked so you end up with thirty-six 1-bedroom units, potentially, the way it is set up now.*

**Klutz:** *But everything is the same. It is just a matter of changing the code so that it becomes conforming in this case.*

**Heard:** *There would not be a physical change to the property associated with this. It would still function in that same manner.*

**Reid:** *I would just like to clarify. This is an amendment in the general ordinance so it is not applying necessarily to a specific district. In other words it applies to all of the multi-family districts so even though it is a time share development that brought it about ... because I know they do this lock out arrangement. How could this potentially come up with say a garden apartment development? Because when they come to you for an original rezoning they usually tell you the number of units and the standard development does not usually have a lock out situation.*

**Heard:** *Where this proposed change for the text amendment is going is in a very specific section in our nonconformity clause related to nonconforming uses. What is specified in there is that for any multi-family or group development that occurred prior to August 18, 1986 that they be allowed to rebuild it. Basically providing protection for those developments that were approved in the very early years of the town at a much higher density than the town presently allows anywhere. It provided some protection for those property owners so they would be able to rebuild and continue to use those units. What that provision does not specifically provide for is an increase in density. That is a circumstance that apparently was not anticipated at the time and trying now to address it with the proposal. We pointed out in the staff report there would be at least a handful of other multi-family residential developments this would apply to. They were developed in that same little five year span at the beginning of the town's history. So there are some other developments it would at least potentially apply to should someone come in and want to use a similar concept. Those would be Dune Tops, Ocean Winds over on West Kitty Hawk Road, Sandpiper Cay, Sea Dunes, and Sea Retreat. I do not know for sure if it would help Sea Retreat because a lot of those have been sold off.*

**Mayor Perry:** *Has anyone signed up to speak at this portion of the public hearing? Clerk Morris indicated no one had signed up to speak.*

**Mayor Perry:** *Does anyone wish to speak at this portion of the public hearing? Let the record show that no one came forward and may I have a motion to go back into regular session.*

**MPT Perry:** *If we have questions on the first one do we need to ask them now or can we go back in ...*

**Sharp:** *That first one is coming up later on your agenda for consideration. You can deal with it then. You can have discussion and questions.*

**Mayor Perry:** *We can have discussion and ask questions after we go back into regular session. This is not a judicial type conditional use. This is just a change of use.*

**MPT Perry made a motion to go back into regular session. Councilman Bateman seconded and it passed unanimously.**

#### **10. RETURN TO REGULAR SESSION**

Council action for public hearing items may include approval, denial, approval with modifications, or tabling action.

**a.) Text Amendment: Proposal to add Subsection 42-250(c)(34) allowing "electronic gaming operations" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.**

**Klutz:** *The only problem I see ... well there are two things. One is the BC-1 district has a whole lot of residential development in it, residential uses, and in passing a text amendment for an accessory use for gaming of this type ... are we opening up a door to that particular use winding up in lots of different spots potentially in those residential uses?*

**MPT Perry:** *Can I ask Joe to put the zoning map on the screen? I asked him before hand to do that in order for folks to understand where you are going with that question because I had it too.*

**Klutz:** *I guess the point is it is not just Winks. BC-1 district is scattered all over the beach and by approving an accessory use in the BC-1 district we are opening up all of those areas to this kind of a use.*

**MPT Perry:** *Joe, the areas of BC-1 that started out back in '86 when they zoned this and were probably, in fact they were motel courts, motor courts, things of that nature, but they are no longer that. They are now residential homes. I doubt a lot of the people even understand that but if we approve this text amendment as it is currently brought to us, even if we put restrictions, attempt to say this gaming operation has to be so many feet from a residence or something, a person owning a residence could in theory decide to put in gaming machines under their house for example and set up a shop. Is that a correct statement?*

**Heard:** *Probably not the way that it is worded. The first criteria is an electronic gaming operation shall not exceed 25% of the gross floor area of the principle retail use. That is part of*

*the applicants proposal so it states to me there needs to be a principle retail use of the property so it could not go on a property where the principle use is residential. But if it is not carefully worded you are totally correct. That could be an unanticipated issue if it was not.*

**Klutz:** *The other thing that I noted was that for BC-1 and BC-2 districts the gaming operations are specifically not permitted at this time. It is not that it is an omission that the gaming operation was set up and there was nothing in the code about it. In the BC-1 designation in Chapter 42-250(c)18f reads, "this shall not be permissible to stimulate late play by gambling incentives such as, but not limited to, free plays or games, monetary rewards or the exchange of coupons redeemable for pay and gifts." That is currently in the code. Not permitted in the BC-1 district. What we would be deciding tonight I think is whether or not we want to change that. The only commercial district on the beach that does not have that prohibition is BC-3. I wanted to point that out and I think the planning board found this use is not compatible with the Land Use Plan in terms of its definition of the BC-1 district as having a kind of a light weight type of business compatible with surrounding residential areas.*

**Mayor Perry:** *Yes, one of the things I want to make clear is we are not talking about Winks and its history. How long it has been here and how much people enjoy Winks. We are talking about those people who wrote the code specifically did not want this type of operation in that district. If we allow it to go in that district we are not talking about just Winks, we are talking about every other building in the BC-1 district. It would be disturbing to see this opened up anywhere in the BC-1 district. It would not have to be a business. It could be a house that would be turned into a business of any sort and could be used. That is the problem I have with it. In rezoning we do not talk about a business, we talk about what would be allowed in the zone, the total zone. So do not get confused. We are talking about what would be allowed in that whole zone. Is that right Mr. Attorney?*

**Sharp:** *Well said.*

**Bateman:** *I agree with you. It is not about Winks. It is about the Land Use Plan. It strictly states family orientated beach community and whether or not I agree with gambling or disagree with gambling or whether I agree with gambling machines or gaming that is not the point. The point is I think the area itself would be changed to the point and could be changed to a point I would not like in the future. It is not about Winks. Like you said, I mean Miles, I went there for years and your daddy, my daddy, and granddaddy, just like everybody else on council and so forth, we were Winks fans. Everybody is a Winks fan and I wish you the best of luck in the future but I cannot support this issue there. But believe me it is a great business and great folks.*

**Mayor Perry:** *If this goes back to '53 I was there. I do not remember when it was but I was there. But no, it is not about Winks, it is not about a particular business, it is about the whole zone that is zoned BC-1 or would apply. And my feeling about BC-2 also ... even if we would try that because it is basically the same as Emilie stated. BC-3 is the only one that actually does not state it so ...*

**Klutz:** *Right. It is the only one that is not specifically prohibited.*

**Reid:** *Joe do you per chance have the ordinance for BC-1 and can you read the ... I think it is called purpose and intent to the BC-1. I unfortunately did not research this before I came but I have something in mind.*

**Heard:** *"The BC-1 district has been established to provide for the commercial needs of the neighborhood and the immediate surrounding geographical area. The commercial development will be characterized by small to medium sized land parcels with commercial development of low intensity. This district is not intended to be developed with shopping centers, shopping malls, or big box retail wholesale businesses."*

**Reid:** *Thank you. It does not have exactly the language I was thinking about but from a planning standpoint when you establish zoning districts and commercial zoning districts you usually develop like a BC-1, 2, and 3. And each one usually starts with BC-1 or something like that and it is considered a neighborhood commercial center. Then you go to a community commercial center and then you go on up to a regional which is basically our BC-3. It is essentially a regional shopping center for the area. So to me BC-1 means this is a neighborhood facility meaning it serves the commercial services for the neighborhood. I do not think this use is a use that needs to go in a neighborhood commercial center. It is a use that has to, in my opinion go into more of a regional center. It is not a neighborhood type facility. I agree with everything everybody else said on the council and I cannot support the application.*

**MPT Perry:** *I have some questions. First question is does this facility have public bathrooms?*

**Heard:** *I will confirm with the applicant. Yes, there are public bathrooms.*

**MPT Perry:** *All right. How long has the operation been in operation? I am getting different time frames on that. I was surprised when I learned of it to start with and I was even more surprised it has apparently been in operation without anybody knowing, at least from the town point of view.*

**Heard:** *From the statements shared with us by the applicant at least some of the machines have been in there since they took over management of Winks in 2010.*

**MPT Perry:** *Going on two years. My next questions are for the police chief and fire chief. If I could ask them to come up and shed some light on this and where I am going with this folks is the fact that a lot of what you have heard the other councilmembers talking about is family oriented, whether this meets that standard or not. So let's get to the root of what this does to the community in that sense. Has there been any police activity connected with this particular establishment in the last two years?*

**Ward:** *No sir. It has not.*



**MPT Perry:** *And I asked you to do some research for me so that we could get a feel for what other areas have dealt with in regard to this kind of operation. Will you share that with us tonight?*

**Ward:** *We contacted the Currituck Sheriff's Office to see if they had any issues related to law enforcement with gaming businesses. They have approximately nine in the county and currently if they have any type of security they hire private security. They have had two robberies but they have both been determined to be employee related and they noted that a number of their customers are currently or have been investigated for various crimes. That is what I got from Currituck.*

**MPT Perry:** *Thank you. Chief Spivey. I went to Winks Saturday and was surprised with the loud noise coming from Art's. It was not coming from Winks but the parking lot was jam packed and most of those, I think, were people listening to the outside band. I am surprised we have not had complaints of noise. The gaming room is kind of like a closet. I assume it was a store room. It has an exit in two places and is right beside an arcade that children were playing in and adults were inside playing the games. From a fire code point of view, in a building of that nature, of that age, does this represent a problem?*

**Spivey:** *By the code no sir. If it has the exits that are required, which it does, then it is meeting the fire code. There have been a couple of inspections since they have been there. It is classified as a business which means we have to inspect it once every three years. There were some minor violations that were corrected. The building is less than 8,000 square feet so it is not required to have sprinklers and it is not required to have a fire alarm system in it. According to our last inspection and re-inspection they meet the current fire code.*

**MPT Perry:** *The exits. Are those two internal entrance/exits or is there one to escape outside from that back room where the gaming room is?*

**Spivey:** *Off of the top of my head I cannot tell you. I will have to go there and check.*

**MPT Perry:** *I guess your code enforcement officer would have checked to make sure that not all of the entrance/exits are going through the store and in order to get from the game room to the front door you have to go through a considerable space and shelves and things of that nature.*

**Spivey:** *That is correct. The store meets the travel distance to the exit and based off what is there the occupant load is determined based off the type of business, the floor space, etcetera.*

**MPT Perry:** *Noise. Art's had a band going and then of course Winks was doing their thing and then I noticed over at Ocean Boulevard they had an outside singer. I walked over and spoke to the manager. He was telling me that when Art's raises that volume his singer has to raise the volume and Winks is crotched in between. Which brings up a parking issue I am going to ask*

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*Joe about it in a minute but have you had noise complaints? There were at least two police officers there the Saturday night I went plus one from Kill Devil Hills. I am not sure what that was all about and I think a third Kitty Hawk police officer went there. Was he responding to noise complaints?*

**Ward:** *We had gotten the crowd gathering permit required by the town and it is passed on to the patrol officers. They went by there three times that night just to make sure everything was good and to let them know that if we got a complaint on the noise they would have to stop.*

**MPT Perry:** *And nobody in that area complained?*

**Ward:** *Nobody complained.*

**MPT Perry:** *I am amazed.*

**Ward:** *We have had complaints at Ocean Boulevard and we address them when we get the calls. Kill Devil Hills was there for a stolen vehicle.*

**MPT Perry:** *Did they find it?*

**Ward:** *It was parked there.*

**MPT Perry:** *Thank you gentlemen. Winks seems to be a parking lot for a lot of different businesses there. With all the gaming machines that we are talking about, a maximum of 40 gaming terminals per location, that is 40 games. If you put them all in there, how many spots per game?*

**Heard:** *The applicant has proposed one parking spot for every two terminals. That would be 20 additional parking spaces.*

**MPT Perry:** *To what is already required.*

**Heard:** *That is correct.*

**MPT Perry:** *And they have enough space there to meet that?*

**Heard:** *I honestly have no idea. The parking situation there is non-conforming and they are not the typical stripped parking spaces that you can count. I honestly do not know what the current situation is to be able to calculate how many machines could even be supported at that location.*

**MPT Perry:** *All right thank you. My opinion on what we have is when you have children in an arcade abutting a gaming operation, and that is what this is, and dispenses cash ... given the history we have coming from Moyock, it is not a family oriented business. Plus the BC-1,*

*because of the hodgepodge way Kitty Hawk was developed over time, morphed into different things and makes it evident that other places could do the same within the BC-1 which would be residential. This is not the place for it. I think we need to address a place for it and probably BC-3 would be that place but BC-1 and BC-2 do not meet that criteria so I am not going to vote for this.*

**Mayor Perry:** *Anybody else? Mr. Attorney anything we ...*

**Sharp:** *No. I think you have covered everything that Steve told me was on the list to be discussed.*

**Mayor Perry:** *Okay and I reiterate again, this is not about Winks, but it is about the zone which is the entire BC-1 zone. That is what we have to look at and not a particular operation.*

**MPT Perry:** *And let's add one thing mayor. This has nothing to do with the morality of gaming. We are not legally allowed to even consider that. It has nothing to do with that whatsoever. The law does not permit it. It has to do with the other issues that have been brought up and concerns that have been brought up. Whether we like gambling or not, that is an individual thing and I do not care what you as an individual do but I do care how it impacts the town. That is the way I am looking at it.*

**Mayor Perry:** *Do we have a motion?*

**Reid:** *I move for denial of the proposed text amendment to add Section 42-250 paragraph c, paragraph 34, allowing electronic gaming operations as a conditional use permitted in the Beach Commercial, BC-1 district. The town council finds this amendment to be inconsistent with the town's adopted CAMA Land Use Plan and not in the public interest. Councilman Bateman seconded the motion and it passed unanimously, 5-0.*

**b.) Text Amendment:** Proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments, provided that certain criteria are met.

**Mayor Perry:** *The next text amendment. Need any discussion? Motion?*

**Reid:** *I move to adopt the proposed text amendment to Section 42-129(7) allowing an increase of density for non-conforming, multi-family residential or group developments when the dimensions of the structures are not changed and the number of bedrooms is not increased. The town council finds this amendment to be consistent with the town's adopted CAMA Land Use Plan and in the public interest by allowing fair and reasonable improvements to non-conforming multi-family residential uses. Councilwoman Klutz seconded and asked for the wording to be changed from "subject to approval of a revised site*

plan by the town council” to “subject to town council approval of a revised site plan.” Reid agreed and Klutz seconded the change. The vote was unanimous, 5-0. (Ordinance No. 12-07)

## **11. PLANNING**

**a.) Site Plan Amendment: Application to amend the requirements of the original site plan approval for Sea Scape Beach & Golf Villas at 4724 N. Croatan Highway to increase the maximum number of multi-family residential dwelling units from 120 to 126. There are no changes to the existing site proposed as part of this application.**

*Heard: As mentioned previously, this site plan amendment ties in with the text amendment. Since we have already covered the background situation in the previous discussion I will not repeat that again but will certainly be glad to answer any questions. To highlight the proposal it is simply a request by the applicant to amend the original site plan approved for the Sea Scape Beach & Golf Villas at 4724 North Croatan Highway to increase the maximum number of multi-family residential dwelling units from 120 to 126. There are no changes to the existing site or site plan that are proposed as part of this application. They would operate it in much the same manner.*

*Just for the record, since it was not covered in the initial discussion, I want to note that after talking with the Dare County Health Department this change does not trigger any need for improvements of the septic system as a result of an increase in the number of units because the number of bedrooms is not increasing. It also does not trigger any additional requirement for parking on site so in other words the parking is the same for two 1-bedroom units as it is for one 2-bedroom unit. Again, it is based on the number of bedrooms. Those did not come into play so it appears the proposal would comply with the town's standards and we would not have any requirements that the site be amended either. The planning board, at their meeting on June 14<sup>th</sup>, voted unanimously to recommend approval of the proposed amendment to the existing site plan.*

Hearing no further discussion or questions, Councilman Bateman moved to grant approval of the amendment to the site plan increasing the number of units at Sea Scape Beach and Golf Villas from 120 to 126 at 4724 North Croatan Highway. Councilwoman Klutz seconded and it passed unanimously, 5-0.

## **12. NEW BUSINESS**

**a.) Amendment to the Town Code: Section 20-51. “No Parking” on the South Side of Luke Street from Ride Lane to North Virginia Dare Trail**

Manager Stockton reported the town had received a request from Bill Brown on Luke Street to make a “no parking” zone from Ride Lane to Lindbergh Avenue. Mr. Brown has a boat and has trouble getting in and out of his driveway when the cars are parked on the south side of Luke

Street. The revision is designated "as posted" so the parking areas on the south side of Luke can be limited. There are two sections of the code that need revision if this is approved. Section 20-51 of the "No Parking" zones and Section 20-54 because it indicates that parallel parking is allowed on both sides of Luke Street.

Councilwoman Klutz added it is going to be no parking "here to corner" just to clear up the small area behind his driveway because when the cars park right next to the road he cannot get his boat in and out. It is only two parking spaces.

Mayor Perry asked for a motion.

**Councilwoman Klutz made a motion to approve the ordinance amending Section 20-51 "no parking" zones, time restricted parking, authorizing the mayor to sign and the town clerk to attest said ordinance amendment. Councilman Bateman seconded. Vote was unanimous to approve, 5-0. (Ordinance No. 12-08)**

**b.) Amendment to the Town Code: Section 20-54. Allow Parallel Parking on the North Side of Luke Street from NC 12 to Ride Lane**

**Councilwoman Klutz moved for the approval of the ordinance amending Section 20-54, parallel parking, subparagraph 5. And authorize the mayor to sign and the town clerk to attest said ordinance amendment. Councilman Bateman seconded and it passed unanimously, 5-0. (Ordinance No. 12-09)**

**c.) Agreement for Professional Services with Albemarle & Associates. This agreement, in the amount of \$35,600, is for procurement of CAMA permits and NCDOT agreements for encroachments for areas 1-7 and 9 as identified in the town's Stormwater Management Plan**

Manager Stockton said as part of Fiscal Year 2012-2013, funding was budgeted for the application of permits for projects in the Stormwater Management Plan except for the Rabbit Hollow area. It was determined those would be separate, between the highways would be separated from the Rabbit Hollow area. This is a proposal from Albemarle and Associates to procure the CAMA permits and the NCDOT agreement for encroachment to proceed with the planning for construction of improvements as outlined in the plan. According to the agreement the work could commence this month and should be completed by October. Permit approvals are needed before the grants are applied for.

MPT Perry noted this was on the consent agenda but asked for it to be taken off. He wants to make sure the minutes reflect some important comments about what council is trying to do and what the chances are. It looks like the best bet, if there is any bet at all in getting grants, is going to be from the federal sources as of the last discussion that was held. He asked if that has that changed.



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Manager Stockton said the Clean Water Management Trust Fund is also a possibility.

MPT Perry thought that was a slim possibility. The permits will be obtained and staff will ask for grants. The federal might come through but the state, probably not. Everything that has been looked into has not been that reliable as far as what is going on plus the economy to boot. He asked how long the permits will last and how renewable are they, for the record.

John DeLucia, with Albemarle and Associates, answered CAMA major permits are good for five years. There is also very good success in renewing permits if they have been acted on. And even for permits that have not been acted upon, so long as major changes have not occurred in state law. Also, they will typically get reapproved especially if it is a long term project. They have had many long term projects that were permitted under CAMA that for one reason or another took longer to build and were extended. An example is a bed and breakfast in Manteo that became Shallowbag Bay and that permit was probably issued in the early '80's. It was still active and usable when Shallowbag Bay Marina was built and it was a marina permit which is probably more difficult to get extended. George Wood from Environmental Professionals has worked with the CAMA division since he was a CAMA permit officer and feels very confident that getting permits in hand will certainly allow five years and they could be extended many times after that.

MPT Perry asked if actively pursuing grants count towards the project.

DeLucia answered it does. The question came up before whether to pursue one or two permits. They are going to be asking for something that is a bit unique. Not unique from what the town does after a big storm but unique from a CAMA permitting standpoint. Trying to get the permit to build the infrastructure and the permit to utilize the infrastructure and utilize it more quickly to reduce the standing water.

Mayor Perry said one of the most important things is not just getting it permitted but being allowed to use it when it is needed.

DeLucia agreed and said not having to wait 15 or 20 days to pump.

Councilwoman Klutz added it is her understanding the infrastructure will not be done if the town is not allowed to pump right away.

DeLucia agreed they are seeking to get the permit for the infrastructure and permission to use it. Initial meetings with the Division of Water Quality and the Division of Coastal Management went very well. What they are asking to do is no different than what they have been permitted in the past to do. It just makes it quicker and it gives an opportunity to evacuate the water before it becomes more contaminated.

MPT Perry said the only other thing he asked council to think about, because his thinking on grants is it is not promising, is perhaps direct the manager during budgeting to think about if the town will ever be able to do it on its own. With that having been said he **moved for the approval of the agreement for professional services from Albemarle and Associates for the total cost of \$35, 600.00 for the stormwater management permitting services and further authorize the town manager to sign said agreement. Councilwoman Klutz seconded the motion and it passed unanimously.**

**13. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER**

**a.) Update on Kayak Launch on Bob Perry Road** – Manager Stockton reported he had been informed by Jenny Gray Jones, Administrator for the Dare County Grants and Waterways, that they will be installing a new kayak launch at the Bob Perry Boat Ramp.

**b.) Possible Funding from Clean Water Management Trust Fund for Stormwater Management Projects** – Manager Stockton said he and Planning Director Heard met with Will Summers of the Clean Water Management Trust Fund. Mr. Summers outlined the grant process and provided the parameters needed to meet in order to qualify for the grants. He indicated the town will need to show it is improving the water quality of the stormwater by discharging into the ocean versus allowing the stormwater to stand by on the properties.

**c.) Update on Recycling Evaluation** – Mayor Perry said with regards to this topic he wants to make sure everybody understands he asked the manager to look into it for information only. He is not advocating it but felt it was a good idea to find out the information and let council hash it over.

Manager Stockton said he sent out information to council and it basically looked at the possibility of removing the Thursday collection and substituting it with a recycling day. It looks like the town could save money. The Town of Southern Shores has a similar program. Their cost is based upon the number of houses they have. Also, the realtors seemed to be positive about the idea of recycling. He thought there was one realtor who said we should retain the Thursday collection. Everybody he has talked with that utilizes the recycling say they fill up the recycling can and only need one pickup per week. He asked if council would like to proceed, consider it more, or bring it up at a later time.

Mayor Perry said if it is started, it cannot stop. That needs to be understood also.

Councilwoman Klutz said if this is looked into in any more depth she suggested considering continuing the Thursday collection in the summer months. The tourists might not have enough cans and start filling up the recycling can with trash. Currently there is a Monday, Thursday, and Saturday collection on the beach. The voluntary recycling collection pickup day is also on Monday. There are many people who come to the beach who live out of town and they put their cans out on Sunday when they leave. They usually have something in place with the neighbor or

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someone to push their can back. If they change the recycling day for Kitty Hawk, if they wind up with a contract there is a chance the town would not have that collection on Monday. Then there would be cans rolled out and staying out. There are things that need to be looked into to make sure things that happen with trash in the summer months ... that this is not just based on feedback from permanent residents. She likes recycling and only has to put trash out once every two weeks. So much of it goes into the recycling can. It might present challenges to the people that are renting their places and to the part-time residents who are here in the summer. And as was said, if it does not work it cannot ... or if they increase the price and it becomes too expensive, it cannot go back to the way it was.

Mayor Perry said what has helped over the years is recycling materials have become more acceptable and people have been reusing them. In the beginning you could hardly get rid of the stuff. He asked about commercial properties such as Sea Scape. How are they counted?

Manager Stockton replied Outer Banks Hauling said they do not collect from the residential areas where they have dumpsters. It is too difficult to try to handle that.

Mayor Perry said he thought the beach road would be the biggest problem in the summer time. It would be the biggest drawback. He is not here to make a decision but does want to hear everybody's input.

Councilwoman Klutz asked about the prospect of keeping all of the collections in place just for the summer months, add the recycling, and see what happens before one of the collection days is taken away. Between Monday and Saturday that is a lot of trash piling up and it is not just recycling that is going into those cans.

Mayor Perry said that would change the figures on what is saved. And education for permanent residents and tourists would have to be a part of this.

Councilwoman Klutz said she is all for this and think the tourists would be too. They ask why there isn't recycling.

MPT Perry said most of the people that are into recycling are doing it voluntarily. The people that are not doing it voluntarily often times do not even roll their trash cans back. He is not talking about the beach because that is a different issue. It is in the village and so the town would just be adding a can. As far as removing the Thursday pickup, that is not a good idea. People are used to it. The same kind of complaints will be received as when council cut chipping to one time a year.

Another thing is the amount of tonnage that is saved, MPT Perry continued. It was based on what was not carried on a Thursday but you are going to make up some difference because if you only empty that trash can one day a week that does not mean you have less quantity in it. It just means you have more stuff. The recycling bin is mostly air. It takes up a lot of room. It will fill

the can but it does not weigh anything so you are not going to save on the tipping fee. You would save on the pickup but the tipping fee itself would not save that much. You run the risk of the people not being happy taking away that day and you cannot undo once started. I am not in favor of it. I think the voluntary system is working well and as far I know Nags Head and Kill Devil Hills has the voluntary system. They are not having any trouble with it.

Councilman Bateman said he is not in favor of it at this time.

**14. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY**

a.) **Update on Overton Property at 731 W. Kitty Hawk Road** – Attorney Sharp reported an additional signature was needed for the town to acquire Mr. Carawan's share and then thought the plan would be heading toward action for a clean title.

**15. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL**

**Flooding** - Councilman Bateman said he wants to do everything possible to address the flooding issues and asked if someone is going to call Senator White to talk about funding.

Manager Stockton said that could be done.

Councilman Bateman said he would like to see that happen. Also, he received a telephone call from Ron Curtis. He told him he was not into buying real estate at this time, that the town did not have any money. But some kind of plan needs to be made because the water table, as Mr. Baskette said tonight, the water table is getting up and if there is a storm, it will not be good.

**Dune Crossover** - Councilman Bateman asked if there was some way to get fencing up on the dune at the end of East Kitty Hawk Road so they cannot use the old crossover.

Councilwoman Klutz said she talked with the public works director about it and he said they are going to fence off the old beach access that is still being used.

**Crosswalk** – Councilwoman Klutz mentioned she also asked about the painting of the crosswalk in the new spot and PW Director Midgett thought NCDOT will probably do the work within a couple of weeks.

**Grant for the Dune Crossover** - Councilman Bateman asked about the funding for the crossover at this site.

PD Heard replied the town has received the grant from the Division of Coastal Management and the town should be getting the contract within the next couple of weeks. At that point staff will get it before council for consideration to enter into an agreement.

**Sandbar Race** - Councilman Bateman said the Sandbar Race had over 500 runners and was held this past weekend. Everyone appreciated the support from the police department, public works, and ocean rescue. Over \$20,000 for the Relief Foundation was raised and it all goes back to the community.

**Recreation Committee Update** - Councilwoman Klutz said the Recreation Committee had a meeting on July 31<sup>st</sup>. They elected officers. Re-elected Christine Buckner as Chairwoman, Dusty Rhodes as the Vice-Chair, and Rita Phillis once again graciously volunteered to take the minutes and prepare those for the committee as a dedicated citizen volunteer.

At the previous meeting Lynne McClean and Tom asked the committee to look into some sort of directional sign at the end of Moore Shore Road at Kitty Hawk Road. Bicyclists are coming from Bay Drive through the Wright Brother's path along Moore Shore Road and when they get to Kitty Hawk Road they look left and look right and they do not know which way to turn. The committee discussed it and would like to make it a simple project. Lynne and Tom presented an example of the kind of directional sign they thought would be appropriate. It is a rustic design, something that could maybe be put together by public works. The question of the right of way came up and Christine talked to PWD Midgett. He said DOT has very specific rules about what directional signs can look like. And there is the whole right of way issue for Kitty Hawk Road. The right-of-way is not known in certain parts and the state does not have a dedicated right-of-way for portions of the road. The committee will probably be looking for a little staff support on trying to figure out if they can place the sign there. Also, if they can move ahead with this, see if it can be a community project rather than something that is going to wind up costing the town a lot of money.

The committee discussed a recreation brochure, something that would be like what is handed out now for recycling. It is a three-fold, one page item. Sandy Hawley volunteered to put it together with input from the committee. So there is another requirement for staff support if council would agree to it.

Answering a question from Mayor Perry about what the brochure is for, Councilwoman Klutz said will be handed out at the town hall and have the location of all the parks in town.

Councilwoman Klutz said the other idea they came up with is the county putting outdoor fitness equipment at the county park in Kitty Hawk. Somebody from the Kitty Hawk Recreation Committee will be contacting Mr. White about that idea.

John DeLucia mentioned shade in the dog park would be nice and Councilwoman Klutz said that has come up several times. Mayor Perry suggested look at fitness and kids before shade and Councilwoman Klutz replied the shade is for the dog owners, not just for the dogs. (Laughter)

**Thank You to Dare County** - MPT Perry noted Dare County Board of Commissioners Chairman Warren Judge is in the audience and recognized that with his help the town can use



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some of the beach nourishment money to offset CAMA permits for crosswalks and other things. He thanked him and said it is very helpful.

**16. PUBLIC COMMENT**

**1. Curt Baskette, Rabbit Hollow, Kitty Hawk, NC:** *Is the message that you are putting priority on the other areas for permitting? What is the council's position may I ask for West Tateway.*

**Mayor Perry:** *The decision was in the beginning they were going to do all the permits at one time but they are different. They are so different they felt like it needed to be done separately.*

**Baskette:** *I understand.*

**Mayor Perry:** *And so it is a whole different process.*

**Baskette:** *You are pursuing the other areas now with grant applications this fall. My question is what is the council's position on pursuing the plan for West Tateway? Is that in limbo? Is that still your intention?*

**Mayor Perry:** *It is still there, we still have the plan. Staff has searched and searched trying to find grant money. In the last couple of weeks they found some possibilities from federal sources. They are looking into that first before we go any further.*

**Baskette:** *I just want to make sure I communicate back with the folks I represent that the council is still committed to, at some point in time, pursuing the funds to make this plan a reality.*

**Mayor Perry:** *It is such an expensive plan that it was put second instead of first.*

**Baskette:** *But you are still committed?*

**MPT Perry:** *It remains in the plan and will remain in the plan. The larger area, the greater impact, we had to prioritize and basically that is what we did. If we do the larger areas between the highways it is felt two things happen. One, we impacted more people in a positive fashion. Also, going back to your percolation issue, it is believed that putting the drainage facilities on the east side of 158 will also impact you in a positive way and that will also give us a chance to find out if that will work without the half a million plus dollars to do Rabbit Hollow. It does not mean it is off the table. It means we had to prioritize and that is the bottom line.*

**Baskette:** *I understand that. I know what position you are in and I do not disagree with your decision. I just want to make sure that council is still committed at some point in time to continue to pursue that particular ... or a solution if that is not the solution for us.*

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**Mayor Perry:** *We have the plan. We just have to do one at a time rather than all of them at once.*

**Baskette:** *Again, if you have not already talked with Senator White I encourage you to do that and bringing him to the site is even better ....*

**Mayor Perry:** *We can do that.*

Mr. Baskette talked further about any flooding that might happen soon and where the water would be pumped.

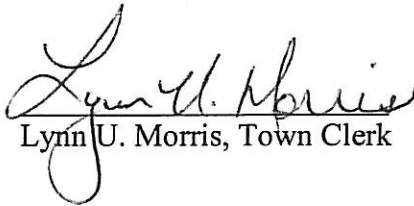
Mayor Perry said the town is still committed but there is not any money.

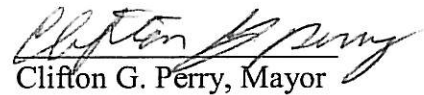
Mr. Baskette thanked council.

**17. ADJOURN**

**Councilman Bateman made a motion to adjourn. MPT Perry seconded the motion and it passed unanimously. Time was 8:36 p.m.**

These minutes were approved at the *September 4, 2012* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor